

REMARKS

The Final Office Action addresses claims 1-13, of which claim 1 stands rejected under 35 U.S.C. § 102(b) and claims 1-11 stand rejected under 35 U.S.C. § 103. Claims 12 and 13 stand objected to as being dependent upon a rejected base claim. Entry of this amendment is respectfully requested and is deemed proper since the claim amendments made herein place the application in condition for allowance and/or in better form for consideration on appeal. Applicants respectfully traverse the Examiner's rejections and request reconsideration thereof in view of the amendments and remarks made herein.

Amendments to the Claims

Claim 1 is amended to more accurately describe the location of a midline marker with respect to a vertebral body. In particular, the amendment recognizes that a portion of the midline marker embeds in a face of the vertebral body.

No new matter is added by these amendments as support is found throughout the specification and drawings, particularly at Paragraph 100, Paragraph 116, and in Figures 3A and 3B.

Rejections Pursuant to 35 U.S.C. § 102(b)

The Examiner rejects claim 1 pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2003/0233145 of Landry et al. ("Landry"). As now amended, claim 1 is directed to a method for implanting an artificial disc in an intervertebral space in which a portion of a midline marker embeds in the face of a vertebral body. Landry describes no such technique. Rather, to the extent that Landry discloses any sort of marker, such a marker device is not embedded in the face of a vertebral body. It is instead placed within the disc space, as shown in Figure 42 of Landry and described in Paragraphs [0182] and [0183]. Claim 1, therefore, is allowable over the Landry reference.

Rejections Pursuant to 35 U.S.C. § 103(a)

Robie, in view of Landry

The Examiner rejects claims 1, 2, and 5-11 pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2002/0161366 to Robie et al. ("Robie") in view of Landry. As now amended, claim 1 is directed to a method for implanting an artificial disc in an intervertebral space in which a portion of a midline marker embeds in the face of a vertebral body. As the Examiner highlights in his most recent Office Action, Robie fails to disclose the use of a midline marker as a guide. As discussed above, the teachings in Landry fail to remedy this deficiency. Claim 1, therefore, is allowable over the Robie reference in view of the Landry reference. Additionally, claims 2 and 5-11 are also allowable over the Robie reference in view of the Landry reference because of their dependence from claim 1.

Robie, in view of Landry, in further view of Michelson

The Examiner rejects claims 3 and 4 pursuant to 35 U.S.C. § 103(a) as being obvious over Robie in view of Landry in further view of the U.S. Patent Application Publication No. 2002/0058944 to Michelson ("Michelson"). As noted above, claim 1 is amended to more accurately describe the location of a midline marker with respect to a vertebral body, therefore making claim 1 allowable over the Robie reference in view of the Landry reference. Claims 3 and 4 are also allowable over the Robie reference in view of the Landry reference in further view of the Michelson reference because of their dependence from claim 1.

Conclusion

Claims 1-13 distinguish over the references cited by the Examiner in a condition for allowance. Applicants respectfully request that the Examiner reconsider the claim rejections and objections and allow claims 1-13. If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

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Respectfully submitted,



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